

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 29, 2010

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on January 29, 2010.

Members present were Chairman Peter Brown, Barry Stumbo, Louis Stout, Jan Meyer, James Griggs and Kathryn Moore. Others present were Jim Hume of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Department of Law. Staff members in attendance were Jim Marx, Bill Saltee and Wanda Howard.

Swearing of Witnesses – At this time, the Chairman asked all those present who wished to speak at today's meeting to raise their right hand and be sworn. He then administered the oath to several members of the audience.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the July 31, 2009 meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously to approve the minutes of the July 31, 2009 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

There were none.

2. **No Discussion Items** - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2010-9: GIRLZ AT PLAY, LLC** - appeals for a variance to reduce the required side yard from 5 feet, 10 inches to 2 feet for renovation and expansion of a single family residence in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 708 West Short Street. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. A potential fire hazard and an existing maintenance problem will be all but eliminated, and all construction will be done in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review.
2. The relatively narrow width of the lot and location of the existing dwelling relative to the side property line are special circumstances that have contributed to justifying some reduction in the required side yard at this location.
3. Strict application of the Zoning Ordinance would possibly result in the continuance of a maintenance problem and potential fire hazard, and would limit the width of an addition to the rear of the dwelling to the point that it would be marginally functional and less desirable.

4. The circumstances surrounding this variance request have arisen primarily because of the narrow width of the subject lot (platted many years ago) and how the lot was subsequently developed, long before the appellant purchased the property.

This recommendation of approval is made subject to the following conditions:

1. Demolition and new construction shall take place in accordance with the submitted application and site plan, or as amended to satisfy requirements of the Board of Architectural Review.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition and new construction.
3. All demolition and construction activity shall be done in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Lynn Pedigo was present representing the appellant. Chairman Brown asked if she had reviewed the conditions and if the applicant would agree to abide by them. Ms. Pedigo replied in the affirmative, and stated that they already had their COA (Certificate of Appropriateness) from the Board of Architectural Review.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously to approve **V-2010-9: GIRLZ AT PLAY, LLC** – an appeal for a variance to reduce the required side yard from 5 feet, 10 inches to 2 feet for renovation and expansion of a single-family residence in a High Density Apartment/Historic District Overlay (R-4/H-1) zone on property located at 708 West Short Street, as recommended by the staff and subject to the three conditions recommended by the staff.

- b. **V-2010-10: FRANCES CLEMENTS** - appeals for a variance to reduce the required 100-foot separation between overhead doors and a residential zone to 50 feet in a Light Industrial (I-1) zone, on property located at 1586 Delaware Avenue. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Overhead doors facing Delaware Avenue are common in this industrial area, with many being located closer than 50' from the adjoining residential zone to the north.
2. The shape and configuration of the lot is not conducive to constructing a reasonably sized industrial building with overhead doors at least 100' from the nearest residential zone, and the ability to comply with the 100' separation requirement is further limited by the fact that the zone boundary extends along the centerline of Delaware Avenue rather than along the edge of the residential lots on the north side of that street.
3. Strict application of the Zoning Ordinance requirement would seriously compromise the ability of the appellant to construct a functional building suitable for manufacturing purposes, given the existence of residential zoning on two sides of the property.
4. The circumstances surrounding this variance request have arisen mostly from the way the lot was created many years ago, and the manner in which the residential zoning was approved to the northeast and southwest of the subject property. The goal of the appellant is simply to make the new building as functional as possible under those constraints.

This recommendation of approval is made subject to the following conditions:

1. The building shall be constructed in accordance with the submitted application and site plan, with the understanding that the exact location of the building may be shifted slightly to accommodate the final design of the parking areas, traffic circulation and dumpster access.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to demolition and new construction.

Chairman Brown asked whether or not there were objectors present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Chris Howard, with Carman & Associates, was present representing the appellant. He stated that they had reviewed the conditions and agreed to abide by them.

Chairman Brown asked what they were going to produce at this location. Mr. Howard replied that

they were going to manufacture duct work.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously to approve **V-2010-10: FRANCES CLEMENTS** – an appeal for a variance to reduce the required 100-foot separation between overhead doors and a residential zone to 50 feet in a Light Industrial (I-1) zone on property located at 1586 Delaware Avenue, as recommended by the staff and subject to the two conditions.

- c. **V-2010-11: RONALD C. WOODARD** - appeals for a variance to reduce the required front setback from 30 feet to 12 feet in order to relocate an off-street parking space in a Single-Family Residential (R-1C) zone, on property located at 256 Vanderbilt Drive. (Council District 4)

The Staff Recommended: Approval of a front yard variance to 20' along Purdue Place, for the following reasons:

1. Granting a variance to reduce the required front yard along Purdue Place from 30' to 20' should not adversely affect the public health, safety or welfare, nor alter the character of the area. Such a reduction will only allow the required off-street parking space to be relocated from the existing garage to the end portion of the existing driveway. Driveway parking is common in this neighborhood, and the proposed parking space will be located at least 20' from the public sidewalk that extends along Purdue Place.
2. The downward slope of the driveway toward the residence, constructed prior to the appellant purchasing the property, is a special circumstance that contributes to justifying a building line reduction from 30' to 20'.
3. Strict application of the requirements of the Zoning Ordinance would force the appellant to either leave the current situation as is, with periodic flooding problems, or add an off-street parking space at locations that are clearly undesirable.
4. The circumstances surrounding this request are primarily the result of how the residence on the subject property was developed – at an unconventional 45 degree angle on the lot - prior to the appellant purchasing the property, and the appellant's efforts to rectify an existing basement flooding problem which is reasonable and justified.

This recommendation of approval is made subject to the following conditions:

1. The required off-street parking space may be relocated in accordance with a revised site plan indicating a building line of 20' to be provided along Purdue Place.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to renovating the garage, widening the driveway and shifting the location of the required off-street parking space.
3. The variance is granted only for the purpose of shifting the location of the required off-street parking space.
4. An Administrative Action plat shall be prepared and recorded in the office of the Fayette County Clerk, to reflect this action of the Board.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Ronald C. Woodard, appellant, was present. Chairman Brown asked if he had reviewed the conditions and if he would agree to abide by them. Mr. Woodard said he had reviewed the conditions and would agree to abide by them.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs, and carried unanimously to approve **V-2010-11: RONALD C. WOODARD** – an appeal for a variance to reduce the required front setback from 30 feet to 12 feet in order to relocate an off-street parking space in a Single-Family Residential [R-1C] zone on property located at 256 Vanderbilt Drive, for the reasons recommended by the staff and subject to the four conditions recommended by the staff.

- d. **CV-2010-5: ST. PETER CLAVER CATHOLIC CHURCH** - appeals for a conditional use permit to renovate and expand the church in a High Density Apartment (R-4) zone; and variances to: 1) reduce the required side street side yard (along Jefferson Street) from 20 feet to 5'4", and 2) reduce the required front yard (along West Fourth Street) from 20 feet to 14 feet, on properties located at 410 through 426 Jefferson Street. (Council District 1)

The Staff Recommended: Approval of the requested conditional use, for the following reasons:

1. A reconstruction and expansion of this established church should not adversely affect the

subject or surrounding properties. A church has been at this location for over 100 years, with a moderate expansion taking place over fifty years ago when the current sanctuary building was constructed. Improved and expanded facilities should benefit the community, and on-site parking will increase as a result of the reconstruction.

2. All necessary public services and facilities are available and adequate for the proposed use.

The Staff Recommended: Approval of the requested variances, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor negatively alter the character of the general vicinity. The setback to be provided for the new building along West Fourth Street will be comparable to that provided by the existing building. Along Jefferson Street, the setback to be provided will actually be a few feet more than that provided by the large commercial building on the opposite side of the street, directly across from the church property.
- b. The relatively small size of this corner property, and the arrangement of the existing parking area and buildings, one of which was originally constructed over 100 years ago, have limited the options for expanding the church while also providing at least some increase in the number of off-street parking spaces to be provided on site.
- c. Strict application of the Zoning Ordinance would restrict the ability of the appellant to make modest improvements to their church facilities. It might also threaten the long-term viability of the neighborhood surrounding the church if in the alternative the church is required to acquire nearby properties in order to expand.
- d. The circumstances surrounding the requested variances are the result of how this urban property has developed over the years, and the desire of the appellant to make reasonable improvements that should benefit the community. No action has been taken by the appellant that might be construed as an attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The church reconstruction and expansion shall take place in accordance with the submitted application and a revised site plan indicating the deletion of between 4 and 6 parking spaces at the rear of the reconfigured parking lot, as determined to be necessary by the Division of Traffic Engineering. This revision shall be done in a manner that accommodates maintaining an open traffic lane between the two main traffic aisles that are proposed.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to demolition and construction.
3. The reconfigured parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the reconfigured parking lot shall be subject to review and approval by the Division of Traffic Engineering, which shall include an evaluation of the redesign of the back end of the parking lot near the garbage dumpster.
5. A lease agreement for 23 parking spaces shall be obtained for the property on the opposite side of Jefferson Street, directly across from the church. One additional space shall be leased for every space lost (from the originally proposed 53 spaces) due to the redesign of the back end of the new parking lot. The parking facility where the leased spaces are located shall be no more than 300' away (measured as walking distance) from the new sanctuary building. This lease agreement(s) shall be subject to review and approval by the Department of Law and the Division of Building Inspection prior to the issuance of an occupancy permit for an expanded sanctuary. Should the appellant be unable to lease additional spaces above the 23 that were originally available, the allowable sanctuary seating shall be adjusted accordingly by the Division of Building Inspection at the time that either building or occupancy permits are issued.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Jeff Pearson, Pearson & Peters Architects, was present representing the appellant. He indicated, when asked by Chairman Brown, that they had reviewed the conditions and agreed to abide by them.

Mr. Stumbo asked, with respect to the two-phase reconstruction/expansion project, when the first phase would begin. Mr. Pearson responded that the church was in the middle of fundraising right now, and they are hoping to start the first phase of the project in the next year or so. He said the start of phase 2 would depend on how well the fundraising efforts go.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously to approve **CV-2010-5: ST. PETER CLAVER CATHOLIC CHURCH** – an appeal for a conditional use permit to renovate and expand the church in a High Density Apartment (R-4) zone; and variances to 1) reduce the required side street side yard (along Jefferson Street) from 20 feet to 5'4", and 2) reduce the required front yard (along West Fourth Street) from 20 feet to 14 feet on properties located at 410 through 426 Jefferson Street, based on the staff's recommendation of approval and subject to the seven conditions proposed.

- e. **C-2010-1: RODNEY V. SWEAT** - appeals for a conditional use permit to establish a sports bar in a Neighborhood Business (B-1) zone, on property located at 208 Legends Lane. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The suite to be occupied as a sports bar is surrounded on all sides by other commercial uses, and the nearest residential zone is a little over 100' away, in compliance with the Zoning Ordinance setback requirement for the type of facility that is proposed. Adequate off-street parking is conveniently located in the shopping center parking lot.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The sports bar shall be established in accordance with the submitted application and site plan, with no live entertainment or dancing to be provided.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the facility.
3. The suite to be occupied shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.

Representation – Mr. Rodney Sweat, appellant, was present.

Objection – Chairman Brown noted, with regard to this case, that there was an objector whose concern had not been resolved after an earlier discussion with the applicant. The objector was asked to come forward. Mr. Mark Shepherd was present to object on behalf of the landlord, LDM Properties.

Mr. Sweat indicated that he was withdrawing his request for a conditional use permit to establish a sports bar at this location. Chairman Brown stated, with respect to the withdrawal request, that no action by the Board was necessary.

- f. **C-2010-2: JENNIFER B. TAYLOR** - appeals for a conditional use permit for a home occupation (piano instruction) in a Single-Family Residential (R-1D) zone, on property located at 512 Lake Valley Drive. (Council District 7)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no aspects of the actual activity (individual piano instruction) that might be disruptive, with any noise generated not likely to be heard beyond the subject property. Adequate off-street parking is available, and any increase in traffic is expected to be insignificant and limited in duration.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Individual piano instruction may be provided in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning instruction.
3. This conditional use shall be considered null and void should the appellant cease to own or occupy the subject property.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Jennifer B. Taylor, appellant, was present. Chairman Brown asked if she had reviewed the conditions and would agree to abide by them. Ms. Taylor replied affirmatively.

Mr. Stumbo commented about the “Suzuki” method of piano instruction, which he found very interesting, particularly because a parent must accompany the student to all their lessons. He said his only concern was that seven students per day can be accommodated. Ms. Taylor responded that the students/parents would be coming one at a time for the individual piano instruction she provides.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously to approve **C-2010-2: JENNIFER B. TAYLOR** – an appeal for a conditional use permit for a home occupation [piano instruction] in a Single-Family Residential (R-1D) zone on property located at 512 Lake Valley Drive, as recommended by the staff and subject to the three conditions.

- g. **C-2010-3: TOHERANA COLEMAN** - appeals for a conditional use permit to provide family child care for up to 12 children in a Two-Family Residential (R-2) zone, on property located at 353 Peachtree Road. (Council District 7)

The Staff Recommended: Approval, for the following reasons:

1. Providing family child care for up to 12 children at this location during normal working hours on Monday through Friday should not adversely affect the subject or the surrounding properties. Off-street parking and the outdoor play area to be provided will exceed the minimum requirements of the Zoning Ordinance.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Family child care for up to 12 children may be provided in accordance with the submitted application and site plan, on Monday through Friday from 6:30 AM to 5:30 PM.
2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection prior to opening the facility.
3. Fencing for the back yard play area, which shall have a minimum size of 2,000 square feet, shall be maintained in accordance with the requirements of the Division of Building Inspection.
4. Care to be provided shall at all times comply with the requirements of the Kentucky Cabinet for Health and Family Services.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Toherana Coleman, appellant, was present for her appeal. Chairman Brown asked if she had reviewed the staff recommendation, and if she would agree to abide by the conditions recommended by the staff. Ms. Coleman replied in the affirmative.

Chairman Brown asked the staff if the proposed hours of operation from 6:30 to 5:30 were common. Mr. Marx replied in the affirmative.

Ms. Meyer asked about the existing fence on this property prior to the children coming to this facility. She noted that, on her site visit, it appeared rusty and part of it seemed to be falling over. Ms. Coleman replied that it would not be replaced prior to the children coming to this child care. She said that the existing fence was not falling over, and that she would be supervising the children when they are outside.

Ms. Meyer asked if she would have an assistant to help her with this supervision. Ms. Coleman replied in the affirmative. Ms. Meyer asked how many adults would be at this location during the day. Ms. Coleman replied that there would be three adults. Ms. Meyer asked if there was a gate that closes off the driveway. Ms. Coleman stated that, at present, there was not a gate across the driveway, but that they plan to close it off with a gate. She stated that they go into and out of the yard through the basement.

Ms. Meyer asked the Building Inspection staff whether they would inspect the fence prior to issuing an Occupancy Permit. Mr. Hume replied in the affirmative.

Action – A motion was made by Mr. Stout to approve **C-2010-3: TOHERANA COLEMAN** – an appeal for a conditional use permit to provide family child care for up to 12 children in a Two-Family Residential (R-2) zone, on property located at 353 Peachtree Road for the reasons provided by the staff and subject to the four conditions.

Discussion of Motion – Mr. Stout suggested to Ms. Coleman that she get some help in the near future to shore up her fence. He did not want to see a problem with her child care operation. He did not believe that it would take a lot of work to straighten up this fence.

Ms. Meyer said that she observed the fence on the left side of the house, and that it required some improvement.

Mr. Hume asked if the fence belongs to Ms. Coleman. She replied that she believed that it did, but she wasn't sure if it was hers or her neighbor's.

Ms. Meyer seconded the motion, and it carried unanimously.

- h. **C-2010-4: TRANSYLVANIA UNIVERSITY** - appeals for a conditional use permit to establish an athletic field in a Highway Service Business (B-3) zone, on property located at 475 Haggard Lane (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. As a practice field, the property will remain primarily as greenspace, with minimal traffic to be generated and little likelihood of any drainage problems resulting from the use. The facility will function as an extension of the existing athletic field on the adjoining property to the north, which has operated as a baseball field for the past ten years.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The athletic field shall be established and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction/grading activity taking place.
3. The parking lot on the appellant's adjoining property, at 495 Haggard Lane, shall be used by persons participating in activities on the subject property.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Richard Murphy, attorney, was present on behalf of Transylvania University, along with Mr. Mark Matthews, Vice President for Finance; and Mr. Jack Ebel, Director of Athletics. Mr. Tom Lambden was also present for Midwest Engineering. Mr. Murphy stated that they have reviewed the staff report, and that the appellant would agree to the three recommended conditions for approval of this appeal.

Mr. Stout asked how much farther this facility would be expanded down Limestone Street. Mr. Murphy stated that this property was on Haggard Lane, but the University was gifted a piece of property on Haggard Court by Ms. Lucille Little. Mr. Murphy was not sure that that other property would ever be used as part of this athletic field, as it was across the street from this facility. Mr. Stout stated that he thought that the facility was an excellent addition to this neighborhood.

Action – A motion was made by Mr. Stout, seconded by Ms. Moore and carried unanimously to approve **C-2010-4: TRANSYLVANIA UNIVERSITY** – an appeal for a conditional use permit to establish an athletic field in a Highway Service Business (B-3) zone, on property located at 475 Haggard Lane for the reasons recommended by the staff, and subject to the three recommended conditions.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none remaining (except for the variance associated with one case below).

- D. **Conditional Use Appeals**

There were none remaining (except for the conditional use associated with one case below).

- E. **Administrative Review**

1. **AV-2010-8: DANA BOGIE STRAIN and WILLIAM R. STRAIN** - appeal for an administrative review to determine that, pursuant to the current official zoning map, a variance is not needed to retain a residence where currently located; and, if not so determined, a variance to reduce the required side yard from 25 feet to 0 feet in a Neighborhood Business (B-1) and the Agricultural Rural (A-R) zones, on properties located at 5846 and 5898 Old Richmond Road (Council District 12).

The Staff Recommended: Disapproval of the Administrative Appeal, for the following reasons:

- a. Article 2-1 of the Zoning Ordinance states that: "The Lexington-Fayette Urban County is hereby divided into zones as provided herein and as shown on the Zoning Map Atlas dated September 1969, as amended from time to time and recompiled as of the date of the passage of this Ordinance, which together with all explanatory matter thereon, is hereby readopted by reference and declared to be a part of this Zoning Ordinance." Since there is no notation of a zone change (aka: map amendment) in the area of the subject property, the dimensions of the B-1 zoning shown on the 1969 Atlas are still in effect for the entire 14-acre subject property.
- b. Updating the Zoning Atlas, from time to time, cannot actually change the zoning on individual properties. Instead, the Zoning Atlas is routinely updated following successful map amendment requests, predicated upon public hearings being held by the Planning Commission, after notice has been mailed to property owners in the area of the amendment well in advance of those hearings.

The Staff Recommended: Approval of a side yard variance from 25 feet to 5 feet, for the following reasons:

- a. Granting the side yard variance, as proposed, will not adversely affect the public health, safety or welfare, and will not alter the character of the general vicinity. It will also not cause a hazard or nuisance to the public because the existing brick residence on the subject property will remain in its current location and also, this variance will not result in any physical change to the subject property.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance because it is good planning practice to have lot lines follow zoning lines (as articulated by Article 2-4(b) of the Ordinance). In addition, the B-1 zone, wherein the relief is sought, has no inherent side yard requirement under Article 8-16(i).
- c. The special circumstances which apply to this property are that the appellant is attempting to follow existing zoning boundaries in creating new lot lines. The main purpose of the proposed subdivision is to allow the mobile home on the A-R portion of the subject property to be replaced by a more conventional single family residence, which is a worthy goal that should result in an improvement to the neighborhood.
- d. Strict application of Article 15-3 of the Zoning Ordinance would impose an unnecessary hardship

on the appellant, by requiring that a portion of the A-R portion of the subject property be incorporated into the same lot as the B-1 property. Subdivision of these 14 acres along the existing zoning boundary was endorsed by the Planning Commission, following a lengthy review of this property.

- e. The circumstances surrounding this requested variance are not the result of actions taken by the appellants subsequent to the adoption of the Zoning Ordinance. The existing house in need of this variance was constructed in 1935, many years before zoning was adopted in all of Fayette County. Also, the current A-R/B-1 zoning boundary was established by action of the Fayette County Fiscal Court, and was not the result of a map amendment request by the appellants.

This recommendation of approval is made subject to the following conditions:

1. The existing brick dwelling may be retained at its current location, still permitting a subdivision of the subject property along the existing zoning boundary.
2. No additions may be made to the northwest wall of the existing brick dwelling that would result in an increase of floor area closer to the existing B-1/A-R zoning boundary.
3. Approval of this variance by the Board shall be noted on the Final Record Plat of the property that is recorded in the office of the Fayette County Clerk.

Representation – Mr. Richard Murphy was present representing the appellants. He stated that this appeal was offered for two reasons, and he understood the staff's recommendation. He was happy to review the appellant's grounds for an Administrative Appeal, but he was just as pleased to focus upon the requested dimensional variance, if the Board was inclined to follow the staff's recommendation on that part of their appeal. He said that they received approval of the subdivision plat last September from the Planning Commission, and that the property was at the corner of Jack's Creek Pike and Old Richmond Road. Mr. Murphy stated that there was a service station on the property years ago, in a concrete block structure.

Mr. Murphy said that four acres of this property was zoned B-1, and the remainder was zoned A-R. There is a brick house on the B-1 property, which was the subject of this appeal. There was also a mobile home on the property, which is located on the high point of this 14-acre parcel. Mr. Murphy stated that the mobile home has had some additions made to it. They filed the plat so that Mr. Bill Strain, who was present with Mr. Murphy at this meeting, and his daughter could remove the mobile home on the A-R portion of the subject property, and build a conventional house on this subject property. The Planning Commission agreed, with the staff, that this property line should match the B-1/A-R zoning line. He said that the Zoning Ordinance does not require a side yard in the B-1 zone; but since the property is abutting the A-R zone as well, the more restrictive side yard of 25' (in the A-R zone) does apply to this proposed lot. They felt that a variance was justified for a number of reasons, including the fact that they are proposing no physical changes to the property. This was being done to allow the zoning boundary to be the property boundary, which all agree was the "best planning practice."

Mr. Murphy said that the brick house, which was the subject of this variance, was constructed in 1936, according to Mr. Strain. It was reconstructed after a house fire for the previous structure at this location. However, it was built more than 20 years before there was zoning in place in the rural county. Mr. Murphy stated that this meets all the criteria for a variance, and the staff was in agreement with that conclusion. He stated that, as part of the approval of the subdivision plat, the Strains have reached an agreement with the Old Richmond Road Neighborhood Association and the Fayette Alliance involving the use of the B-1 zoned portion of this property. He stated that his clients are delighted with the agreement, as they get to build a new house, while the neighborhood association obtains some restrictions on any future B-1 use of this property. If this is approved, there would be deed restrictions filed in the County Clerk's office, restricting the future B-1 uses on these four acres. He wanted the Board to understand the process that was taken to get this application to the Board. He stated that, in case there was a discussion as to which Zoning Atlas is considered, then he would consider a withdrawal of their administrative appeal.

Discussion – Ms. Moore stated that she had a couple of concerns about granting a dimensional variance in this case. She thought that it was the result of actions taken subsequent to the adoption of the Zoning Ordinance. She thought that the reason that this variance was needed was that the applicant requested a subdivision of this property. Were it not for the proposed subdivision, this appellant would not be before the Board requesting approval. She understood that the house was constructed many years ago, but she said that the variance could be avoided by asking to rezone both lots to A-R. But then, she said that the Planning Commission wouldn't want to rezone the A-R area to B-1. Mr. Murphy replied that the rezoning to A-R would not be a solution, as the B-1 property was not non-conforming at present. There was one non-conforming lot at present; and if this variance is approved, there would still be only one non-conforming lot remaining. The four-acre B-1 lot would be conforming in all respects. Mr. Murphy stated that he understood Ms. Moore's concern, but the relief could be granted only by moving the lot line to not

be coincident with the B-1/A-R zoning line, to increase the side yard setback from the existing residential structure. Mr. Murphy stated that the Planning Commission did consider rezoning these B-1 areas in the rural portion of the county a few years ago, but they suspended those rezonings due to the outcry from several rural property owners. He stated that for six months, he had this very type of discussion with Mr. Jim Hodge, representing the neighborhood association. As a result, these restrictions were developed in the alternative. He stated that the real goal was to have the zoning line also become the property line, and that this was the unique circumstance that justified a variance. He stated that the new home planned here would be a modest three-bedroom residence, and not a mansion.

Mr. Griggs thought that it made a lot of sense to make the zoning boundary also become the property boundary in this instance. He complimented Mr. Strain on the condition of the brick house, stating that it was a lovely home. He thought that it should stay where it was. He wondered if the variance could disappear if the house was ever removed. Mr. Murphy said that he could agree to have the variance cease if the house were ever removed from this property.

Mr. Sallee stated that the staff was not opposed to this, in concept. He then displayed some additional language for a fourth condition on the overhead projector for the Board to consider with this appeal:

4. If the dwelling is ever destroyed or demolished, it shall be rebuilt in compliance with the required 25' side yard or the applicable setback requirement at that time, unless an additional variance is granted by the Board.

Mr. Murphy stated that his client would be in agreement with this added requirement.

Ms. Moore asked if the administrative appeal should be withdrawn before the Board acts on the requested variance. Mr. Sallee replied that Mr. Murphy had earlier indicated that he would withdraw their Administrative Appeal if the variance were approved.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout and carried unanimously to approve **AV-2010-8: DANA BOGIE STRAIN and WILLIAM R. STRAIN** – an appeal for a variance to reduce the required side yard from 25 feet to 0 feet in a Neighborhood Business (B-1) and the Agricultural Rural (A-R) zones, on properties located at 5846 and 5898 Old Richmond based upon the recommendation of the staff, subject to the three conditions originally recommended, plus the fourth condition offered at this afternoon's meeting.

Mr. Murphy stated that, at this time, they would formally withdraw the administrative appeal associated with their application. Chairman Brown thanked Mr. Murphy, and stated that this would then conclude this matter.

2. **A-2010-7: HILLIARD LYONS** - appeals for an administrative review to transfer an otherwise allowable wall sign to a building face with no street frontage in a Professional Office (P-1) zone, on property located at 3120 Wall Street (Council District 10).

The Staff Recommended: Approval, thus allowing the transfer of wall signage proposed, for the following reasons:

- a. Article 17-7(e)1 of the Zoning Ordinance states that the number of wall signs permitted on a building in a Professional Office (P-1) zone depends on how many building walls have street frontage; it does not specify that wall signs must be placed on those particular walls in all circumstances.
- b. The number of wall signs permitted at this location will not be exceeded, as the appellant has agreed to not place any wall signs on the building wall that fronts on West New Circle Road.

This recommendation of approval is made subject to the following conditions:

1. A wall sign not exceeding 5% of the wall area may be placed on the building wall that faces south, toward Harrodsburg Road.
2. A sign permit shall be obtained from the Division of Building Inspection prior to placement of the proposed sign.
3. Prior to the issuance of a sign permit, written documentation from the owner(s) of the building shall be provided to the Division of Building Inspection confirming that no wall signs will be placed on the building wall that fronts on West New Circle Road.

Representation – Mr. Tom Kessinger was present on behalf of the appellant. Chairman Brown asked if asked if he had reviewed the staff recommendation, and if the appellant would agree to abide by the

conditions recommended by the staff. Mr. Kessinger replied in the affirmative.

Chairman Brown stated that he did not oppose the action requested, but he asked the staff if this would create any sort of precedent. He did not see a recommendation here that would prevent a similar request in the future. Mr. Marx stated that this may not automatically be a bad precedent. He said that in this case, there did not seem to be a downside to allowing the applicant to move the allowable wall sign to one of their choosing. Mr. Sallee added that the staff was also aware of a prior application to move a wall sign on a medical building in the Hamburg area. While the staff did not recommend approval of that change, for a variety of reasons, the Board did allow that wall sign to be relocated.

Ms. Moore asked if the appellant wished to erect the sign on a wall other than on the side that faces a street, if the applicant was permitted to do so, or if they first needed the Board's approval to do so. Mr. Sallee replied that it does first take approval by the Board. Ms. Moore then asked if Building Inspection ruled that this wall sign needed to face the street. Mr. Hume replied that they asked for the sign in question to face the street and the Division of Building Inspection refused to issue the sign permit for a sign not facing the street.

Ms. Moore asked if Building Inspection had any comment about this sign appeal. Mr. Hume replied that he was pleased that the issue of whether this could set a precedent had been considered, but that he was confident that the Planning Staff would not let this happen. Ms. Moore asked if this appeal was approved, if Building Inspection would then permit similar signs. Mr. Hume replied negatively, and said that any future applicant would also have to appeal to the Board for this type of sign, as the circumstances in these types of appeals are all different. He thought that these should be reviewed on a case-by-case basis.

Mr. Stout noted the other case that was mentioned earlier, and that it had also been approved by the Board. He recalled about a case last year that lingered for months before the Board, because there were worries about the precedent that the sign might provide. Mr. Hume agreed, and stated that that is why each such appeal needs to come before the Board.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout to approve **A-2010-7: HILLIARD LYONS** – an appeal for an administrative review to transfer an otherwise allowable wall sign to a building face with no street frontage in a Professional Office (P-1) zone, on property located at 3120 Wall Street for the reasons provided by the staff, and subject to the three recommended conditions.

The votes on the motion were as follows:

Ayes: Brown, Griggs, Moore, Stout, Stumbo

Abstained: Meyer

The motion for approval carried.

Note: Chairman Brown declared a recess at 1:51. He called the meeting to order 1:58 PM with all members present.

3. **AC-2010-6: RESOURCE RESTORATION, LLC** - appeals for an administrative review to determine that a landing strip can be considered accessory to a farm; and, if not so determined, a conditional use permit to operate a landing strip in the Agricultural Rural (A-R) zone, on property located at 2550 North Cleveland Road (Council District 12).

The Staff Recommended: Disapproval of the administrative appeal, upholding the decision of the Division of Building Inspection, for the following reasons:

- a. Private aircraft landing strips are not a common feature on agricultural land in Fayette County. Since such a use/structure is not customarily used in association with agricultural activities, it is not appropriately considered as accessory in nature as that term is defined and used in the Zoning Ordinance.
- b. An aircraft landing strip, which in this particular case is paved with a width of approximately 40' and a length of over 2,000', is not substantially similar to any of the uses or structures that are specifically identified in the Zoning Ordinance as accessory in the Agricultural Rural (A-R) zone. However, a landing strip is an essential component of any airport, and an airport is specifically identified as a conditional use in the A-R zone.

The Staff Recommended: Approval of a conditional use permit, for the following reasons:

- a. A private landing strip for small single-engine aircraft at this location should not adversely affect the subject or surrounding properties. The landing strip is over 3,000' away from North Cleveland Road, and is located at the rear of the farm. Use is expected to be infrequent, with no more than 10 landings per month. The facility is at least 400' away from the nearest designated floodplain, and has been permitted by State and Federal regulatory agencies with regard to both operational aspects and environmental protection.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The landing strip shall be maintained and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection within 30 days following action by the Board, prior to initiating use of the landing strip.
3. The facility shall be maintained and operated in accordance with applicable requirements of local government and all State and Federal agencies with jurisdiction.
4. Use of the landing strip shall be limited to the appellant's private plane, with no use for commercial purposes.

Representation – Mr. Bill Lear, attorney, was present for the appellant.

Request for Postponement – Mr. Lear stated that they were requesting a one-month postponement of this request, to allow additional time for discussions between the appellant and the objectors.

Objection to Postponement – Mr. Stephen Cox, 5350 Todds Road, was present to object. He stated that other members of his family were scheduled to arrive any minute to object to this request. He objected to the request for postponement, because he told his family that he would appear at today's meeting to represent their interests. Since they have not yet arrived for this meeting, he did not feel that he had the authority to agree to anything else on their behalf. He did state that he had spoken with Mr. Lear, and did not personally object to a continuance of this appeal; but with his family still absent, he could not agree to a postponement at this time.

He repeated that he was still waiting for some of his family to arrive for this hearing, and perhaps another recess could be called. He said that he would be out of the country next month; and if the matter were postponed one month, he could not attend then.

Discussion – Ms. Moore asked if Mr. Cox would object to a two-month postponement. Mr. Cox said that he would not object. Mr. Lear stated that in 35 years, this was the first time that he has been asked by someone to postpone a request for a month, and then find out it "wouldn't work" when he then tried to do so. Mr. Lear stated that they would not agree to a two-month postponement. They did agree earlier to a one-month postponement, with the understanding that there would be good faith negotiations over the next 30 days. He asked the Board either to hear their appeal today, or postpone it for just one month.

Mr. Cox said that they are ready to hear this appeal today; but in all fairness to his family, he could not agree to a one-month postponement in their absence.

Chairman Brown asked if any Board member would like to offer a motion to postpone this appeal for one month. Ms. Moore said that it was her feeling that if the objector now objects to a one-month postponement, then the Board should proceed with the appeal today. No motion was offered.

Mr. Marx circulated several letters of support and opposition to the Board at this time for this request.

Mr. Lear stated that the petitioners would propose to hold the administrative appeal in abeyance, but first discussing first the proposed application for a conditional use permit. Depending upon the outcome of that discussion, the administrative appeal may become moot. Chairman Brown agreed that that was the proper avenue for this application, since the staff had recommended approval of the conditional use, but disapproval of the administrative appeal.

Swearing of Witnesses – Chairman Brown noted that several citizens had recently arrived for this hearing that had not been present at the outset. He asked those that wished to testify to stand, and he administered the oath to those present.

Appellant's Presentation – Mr. Lear stated that he represented the appellant, which was a family-owned company owning property on North Cleveland Road. He stated that Mr. Ryan Duff was the principal of

that company; and it is Mr. Duff that intends to build a house on this farm, and to seek the conditional use permit. He stated that this farm was 224 acres in size, located one mile south of Winchester Road. Mr. Lear said that this appellant has owned the property since 2006, and they have spent significant sums of money improving the property since that time. It has not been in good shape since the first ice storm hit in 2003. For the past two years, this farm has been used for hay production, which has sustained their farming operations elsewhere. Mr. Duff and his family live near Hazard, and the hay has been used for their cattle farm near that city.

Mr. Lear said that Mr. and Ms. Duff travel frequently between Hazard and Lexington, because Ms. Duff owns a business here. Mr. Duff is a licensed pilot, and has been for the past ten years. He flies a Cessna 182, which is a small, single-engine aircraft. Mr. Lear submitted a photograph of this type of airplane into the record, and the photo was shown on the overhead projector. He said that this type of aircraft is not a jet, and it does not generate a great amount of noise. Mr. Lear said that this airplane may not produce much more noise than a bush hog.

Mr. Lear submitted several other exhibits into the record of this hearing. Because of the number of trips the Duffs make between Lexington and Hazard, and because Mr. Duff is a pilot, last year he began the process of obtaining permission to construct a landing strip on the subject property. He went to the Kentucky Department of Transportation to inform them of his plans. That agency referred him to the Federal Aviation Administration (FAA). The FAA recommended that Mr. Duff hire a consultant, so he did employ Keating Consulting, Inc., which is a Kentucky consulting firm that specializes in this type of application. Mr. Keating went to the Kentucky Department of Aviation, which was in the Transportation Cabinet, and also to the FAA. He then contacted the U. S. Army Corps of Engineers and he filed the required applications with all of those agencies. All of those agencies have approved their applications for this facility. Mr. Lear stated that one thing that Mr. Keating did not do, because he did not know to do so, was to file this type of an application with the LFUCG. Mr. Keating did provide the only notice to the local government, which was to the Property Valuation Office, which happens to be in the same building as the Division of Building Inspection.

Mr. Lear submitted copies of the approvals from the FAA for review by the Board. He also submitted information from Mr. Steve Marcozzi, the Manager of the Airport Inspection Branch of the Kentucky Department of Aviation, approving the location of this landing strip. He further submitted a packet of information from the Army Corps of Engineers, which stated that Mr. Duff could move forward. He also relayed information from Mr. David O'Neill, the Property Valuation Administrator for Fayette County, indicating that he did receive notice of the proposed aircraft landing strip, dated March, 2009.

Mr. Lear stated that Mr. Duff relied upon the information supplied by his consultant, and these agency approvals, all of which indicated that he could proceed with construction of the landing strip, and he did so. He had almost completed construction of the landing strip, with the exception of a small amount of paving, seeding and laying straw on disturbed soil, when on November 9, the staff of the Division of Building Inspection and/or the Division of Water Quality visited the site. They informed him that he had not obtained the approval of the local government for a grading permit nor for a conditional use permit. Mr. Lear stated that Mr. Duff has since applied for, and received, the required grading permit, and also applied for this conditional use permit. Mr. Lear submitted the approved grading permit for consideration by the Board.

Mr. Lear said that the Urban County Government Division of Engineering also notified the Kentucky Division of Water. They have also inspected this farm and had issued, not a Letter of Violation, but a Letter of Warning to Mr. Duff. Resource Restoration has worked with the Division of Water, and has since been told by e-mail that they are now considered to be in compliance. Mr. Lear submitted a copy of that e-mail to the Board.

Mr. Lear stated that this was an unfortunate but understandable situation where an applicant went to five agencies for approval "but not to all six," which was why the appellant was here today. Mr. Lear said that the landing strip has not been used, and that there has been every attempt to jump through all the necessary hoops. He asked Mr. Duff to provide background on his property to the Board.

Mr. Duff stated that his primary residence was near Hazard, but that he currently owns two houses in Lexington as well—one downtown and one in the Hamburg area that was for sale so that he can move to the farm on the subject property. He loves its location and the area, and has met some of his neighbors. He stated that the drive from Hazard to Lexington is about 1 hour & 30 minutes to 1 hour & 45 minutes. However, he said that the flight from there to here is only about 30 minutes in duration, and that he usually travels back and forth 2-3 times per week. Mr. Duff stated that he has since purchased an additional 40

acres near his farm.

Mr. Duff stated that he has two letters from adjoining neighbors that are in support of his request, and those should be in the information already submitted to the Board. He said that aviation law requires that aircraft fly at an altitude of at least 500', and he has done that many times. His route to land would be across the neighbors' properties that are in support of this request. He showed a map of his landing strip and the shaded properties that represent his neighbors. In taking off and landing, he would be able to attain that altitude by the time he traversed either of those two properties.

Mr. Duff said that he was saddened in that some of his other neighbors were in opposition to his request. He did not believe that his Cessna would be more disturbing to them than a riding lawn mower would be. He also offered to restrict his use of this landing strip, as was suggested by some of the letters of opposition submitted to the Board. He said that he has tried to do what was right.

Mr. Stout asked if he was the only person that would be using this landing strip. Mr. Duff replied that he would be amenable to some restrictions along this line, but that he does employ two pilots that operate larger aircraft, and he would like the ability to have these other pilots fly his wife in and out of Lexington. Mr. Stout asked if there would be any "cattle buyers" flying in and out of this property. Mr. Duff replied in the negative.

Chairman Brown asked about the map shown to the Board with the adjoining properties shaded, which Mr. Duff had described earlier. Mr. Lear said that the two property owners that are shaded on the map are Mr. Tom Norton who owns the farm to the north and east of Mr. Duff's farm, and Dr. & Mrs. Jack Van Nagell of Brookdale Farm, who own the property to the south of Mr. Duff's farm. The map also indicated that the southern end of the runway was 3100' east of Cleveland Road, while the north end of the runway was 4300' east of that roadway. Mr. Lear said that, under FAA regulations, a pilot only needs to fly at an altitude of 501' and that this Cessna aircraft can descend from that altitude across these two adjacent farms and land on the subject property.

Mr. Lear stated that Mr. Duff's FAA permit was for Visual Flight (VFR) and not for Instrument Flight (IFR). Mr. Lear stated that this permit was also only for "good weather" landings and takeoffs, and limited to only ten or twelve takeoffs per month. He said that they would also be amenable to a restriction upon this level of activity by the Board. He thought it important for the Board to understand that the immediately adjoining property owners do not object to this request and that should provide a high level of comfort for this use.

Mr. Duff said that he and his family don't "buy and sell" property; but, rather, they typically just buy property. All he hoped to do was to build a principal residence on this farm. He repeated that he has done what he "thought was right."

Mr. Lear submitted a written statement from Mr. Duff into the record. He then addressed the legal framework for this request for a conditional use permit. He distributed a handout of their proposed findings at this time. He said that the FAA and the Kentucky Transportation Cabinet's Division of Aviation are the authorities to approve airports and landing strips. He then read portions of KRS 183.090 into the record to indicate the Cabinet's authority for airport and landing strip safety. All of those safety factors have been a part of their review by the Division of Aviation in their approval of this location. Mr. Lear also described state administrative regulation KAR 602, Chapter 20, and read portions of those requirements into the record as well. He concluded by saying that these agencies have inspected the proposed landing strip, and it has received their approval. He submitted copies of these for the record.

Mr. Lear read from the LFUCG Code of Ordinances and from the LFUCG Zoning Ordinance, which make references to other similar facilities. Mr. Lear opined that a landing strip was a "lesser included facility" to an airport, which is the listed conditional use in the A-R zone. It was, in essence, an airport without the control tower, restaurants, parking lots, and similar facilities.

Mr. Lear stated that there are some other precedents that have respected the judgment of the KTC and the FAA in matters of safety and location. He was aware of only one other landing strip that had been requested – one by Samuel A. B. Boone, which Mr. Lear's law firm represented. The landing strip was approved on property known as Wimbledon Farm, which is southeast of Lexington, in the middle of some of the highest value farm real estate in Fayette County. This should demonstrate that an air landing strip can be a good neighbor to horse farms and other rural property in sensitive farming areas.

Mr. Lear also entered into the record the recent Staff Report for a heliport in the Blue Sky Industrial Park, which indicated that FAA considerations are an essential part of the safety of these types of facilities.

Mr. Lear again referenced the map, which indicated the two adjacent farms that had supplied letters of support for their request. North of these two properties, the next nearest dwelling is about one mile from the end of the runway, near Winchester Road. He said that to the south there is a residential structure about 4000' from the south end of the runway. However, although it could be conditioned by the Board that no airplanes fly over this dwelling, the planes will be at the required altitude by the time they would reach that house. More importantly though, they would already be banking to turn to the southeast to head to Perry County.

Mr. Lear provided a list of private of landing strips maintained by the Kentucky Transportation Cabinet. He said that the point of this exhibit was to show that this isn't an unusual facility or operation in a rural area. In fact, Mr. Lear said that there are four in Bourbon County. There was one in Fayette County in addition to Wimbledon Farm, but he was not sure that it was used. Every county surrounding Lexington-Fayette County had at least one landing strip.

Mr. Lear said that they are supportive of the staff's findings, but he also supplied his own findings to the Board and reviewed them with the Board at this time. He said that their proposed findings also provide information about the approvals from the other agencies that he had mentioned at this hearing.

Board Questions – Mr. Stout asked Mr. Lear about the letters of opposition, and about some assertions that there are overhead electric lines that would impair take-offs and landings. Mr. Duff responded that there are overhead lines along the edge of his property, to the north and south of the runway. He indicated their location using the shaded map they had provided. These lines connect to the electric substation on Winchester Road. When the state agency inspected his property, they had "no issue" with these utility lines. There are tree lines in the same location as the electric lines.

Mr. Griggs asked not about the appropriateness of the airstrip, but about the house and the hangar on the subject property. Mr. Lear stated that there was an old pole barn on the property. The Duff's have added a newer section to that barn, which they are entitled to do, since it was an agricultural building. That new section houses farm equipment and it has housed a helicopter, which Mr. Duff can operate. Mr. Lear said that, in the agricultural zone, a helicopter can land an unlimited number of times on a farm, but they are required to be permitted in the Urban Services Area. He concluded that it was a lawful agricultural building on this property. He said that the barn did have an apartment within it, as do hundreds of other barns in Fayette County.

Mr. Griggs did not believe that they were speaking of the same building. He said that it was an elaborate building next to a hangar that was furnished with Barcelona chairs, wide-screen televisions, two bathrooms, and a kitchen with a fancy refrigerator. Mr. Lear replied that everything he described was contained within a pole barn that has been located on this farm for 50-60 years. Mr. Griggs asked whether the major improvements to the pole barn were ever permitted. Mr. Lear replied in the affirmative. Mr. Griggs asked whether or not a building permit was ever sought for these improvements. Mr. Lear replied that he did not believe so, and speculated that they were allowed inside of an agricultural structure.

Mr. Griggs expressed that one big question, in his mind, was whether this airstrip was constructed without a permit, or whether there was just an oversight. He thought that if there was a pattern of behavior indicating that permits were intentionally not obtained, then that would be another matter, and he would "have a problem with it." Mr. Lear concurred. Mr. Griggs questioned the need for the notice to the PVA, and surmised that that was done to allow for a reassessment of the property for the tax rolls. He asked Mr. Lear if that had also been done about the improvements to the house. Mr. Lear replied that they have renovated the entire property, including the house. He said Building Inspection did not require any action be taken relative to the house, which could have been done as part of this application. Mr. Lear thought that could be a topic "for a different day." He commented that he could address the authority for that construction at a different time. As to the notice to the PVA, Mr. Lear was unsure as to why that was required. According to KAR 602, Chapter 20, there is no indication for notice to the PVA. Mr. Lear was not sure as to why the PVA was the entity or agency for which "local notice" was to be provided.

Mr. Stumbo asked Mr. Hume to address Mr. Griggs' question as to whether any permits were required for the barn construction. Mr. Hume replied that his office received a complaint about the airstrip under construction. He looked at whether this was a viable conditional use. He believed that the barn was an allowable accessory use to the conditional use, and he would view the barn as accessory to the airstrip. He based his opinion upon the reports he received from his field inspector, who had inspected this site.

Mr. Lear submitted, for the Board's consideration, the CFR regulation that indicates the requirement for a

minimum of 500' of altitude for aircraft.

Ms. Moore asked about the listed Fayette County landing strips. She asked about the zoning of the other facility. Mr. Lear was unsure, but strongly suspected that it was also zoned agricultural. He knew that the one in Jessamine County that appears on the state's listing was still active, and was in an agricultural zone. Mr. Hume stated that the Boone landing strip was in an agricultural zone, noting that it has been approved for years, and his office has not received any complaints about that use. Ms. Moore asked if the Boone landing strip was still active. Mr. Hume replied that he thought so, but that was part of the testament to these uses – i.e. that sometimes it can be hard to tell for sure whether they are active or not.

Chairman Brown asked Mr. Hume if it was similar in size to the one now proposed. Mr. Hume wasn't sure as to its length, but said that it was either a grass or dirt airstrip, and that it handles the same type of aircraft as this one. Mr. Sallee stated that the Staff Report from the case file for the Boone airstrip indicated that it was a little more than 2,800' in length and 100' wide. Mr. Griggs stated that the Boone airstrip is a grass strip and not paved, with which Mr. Sallee concurred. Mr. Lear replied that their proposed landing strip was about 2,000' long by 40' in width.

Objections – Mr. Stephen B. Cox, representing the Clark family, said he was present not in any legal capacity, but as an affected nearby landowner. He told the Board that the executor of the estate of Philip H. Clark, Mr. Gary Waits, sold the subject property to the Duffs.

Chairman Brown asked Mr. Cox to identify their property on the map supplied by the appellant. Mr. Cox did so, identifying land south and west of the van Nagell property as the Clark family property. He stated that it extended to the south from this location all the way to Todds Road, in two separate farms of about 1,000 acres in size. He said that they also own the farm immediately to the southwest of the subject property, fronting upon Cleveland Road.

Mr. Cox stated that they are objecting due to the impact that this landing strip would have on their agricultural property. Mr. Waits has never received any notice of either this landing strip, nor of the changes that have been made to the barn for the dwelling and the hangar.

Mr. Griggs asked where the family owned land adjacent to the subject property, and Mr. Cox identified it on the submitted map. He stated that the family hoped to restore the historic home on this property.

Mr. Stout asked if, when the family sold this land to the Duffs, they ever discussed "what they would not like to see" on this farm. Mr. Cox replied in the negative. He said that at the time, it was their understanding that the Duffs would use the property for agricultural purposes. They had seen a small helicopter used by Mr. Duff, but they did not believe that to be a "permanent fixture" on this property. He said that there is a helipad on the farm. Mr. Cox stated that the pole barn had been used previously as an animal feed barn. However, he opined that its basic character has been greatly altered with the construction of the dwelling within it. He characterized it now as a dwelling unit with an attached hangar.

Mr. Stout asked if the property with the historic home was 3,100' from the south end of the runway. Mr. Cox replied in the affirmative. Mr. Stout asked if anyone was living in the historic home. Mr. Cox again replied affirmatively. Mr. Stout asked if that historic home was also 3,100' from the end of the runway. Mr. Cox replied that the home was approximately 2,100' from the end of the landing strip; as it was set back about 1,000' from Cleveland Road. Mr. Stout asked if there were any other Clark family homes within two miles of this landing strip. Mr. Cox replied that Ms. Clark would provide testimony later in this hearing, and she resides less than one mile from the landing strip.

Mr. Cox had submitted a letter of opposition to the Board previously, and he wanted to ensure that it was entered into the record. Ms. Boland stated that its submission ensures that it will be part of the record. Mr. Marx stated that the letter was distributed to the Board earlier in this meeting. Chairman Brown acknowledged that the members would read the letter, and that it was entered into the record.

Mr. Cox said that their family understands the geography and topography of this land very well, and was concerned about this proposed use. He said that they are cattle farmers, which was an inherently dangerous operation. He said that cattle are curious, and they find ways to get through fences. This was usually caused by predators or by car accidents that put holes in the fences. Mr. Cox said that recently, he had to try to get a single heifer into a field after dark, which was no laughing matter. They feel that over flight at 500' would panic the cattle to the point that they may run through fences and endanger property and lives. Highway travelers could also be impacted. In spite of their actions, cattle escape through these fences about twice a month. He felt that the increased air traffic could exacerbate this problem, or

possibly lead to an inadvertent fatality.

Mr. Cox was unsure whether it was required that this use have an agricultural purpose, but it was his belief that it would not have an agricultural purpose. He said that Mr. Lear has glossed over the past activity with this property, and has focused upon the future, which is his job. However, Mr. Cox said that Mr. Duff has terraformed this farm using mining and excavating machinery, converting the farm into "parkland" in addition to constructing the dwelling, the hangar and the airstrip. He stated that there are very few fences on this property, and it has been mowed to the consistency of a golf course. He said that there has been no livestock on the farm, except for a few animals belonging to Mr. Waits, which had received permission to graze on the property. Mr. Cox said that Mr. Duff later asked that the cattle be removed from his property because "he didn't like seeing the manure on his land."

Mr. Cox stated that besides the obvious threat to life due to low-flying aircraft, they are deeply concerned about a lack of "good faith" by Mr. Duff. He meant no disrespect to Mr. Duff; but it was his opinion that his actions, not his intentions, have spoken loudly. He said that Mr. Duff has failed to obtain building permits for a landing strip, a hangar, a sophisticated dwelling unit, and for a helicopter pad. He has also failed to register his vehicles in Fayette County. He meant no disrespect, but said he did not feel Mr. Duff respects the laws of Fayette County. These are glaring omissions for someone that approaches the U. S. Army Corps of Engineers but did not approach the Division of Building Inspection.

Mr. Cox said that there has been some dangerous blasting on the Duff property, unannounced, that has damaged plaster on their historic house. This shows a disregard for his neighbors and for this community. He believed that this may also affect sensitive aquifers in the area. He gave an example of a spring on their property that had been drained dry, inadvertently, due to the drilling of a well. He said that the Clark family values this land, and that the Boone Creek Historic District was a result of this concern. He cited a number of historic houses to the south and east of this location, and said that this was to raise awareness of the value of this land, when folks ask permission to develop.

Mr. Stout asked that if the family had such a love for this area, why they sold this property. Mr. Cox stated that the sale was a difficult decision made by the family. The historic home, a Victorian structure more than 100 years old on the adjoining farm, was in need of repair. They sold the land in order to renovate the historic house. They relied upon the agricultural zoning of the property to ensure that it would continue to be used in an agricultural manner. That was why they were disappointed that it has not been. Also, he said that the normal consideration given by a true neighbor has not been given in this instance.

Mr. Cox repeated that his family was concerned that Mr. Duff be a good steward of this land, which does mean a great deal to his family.

Ms. Marian Clark, 2062 North Cleveland Road, was present to object. She stated that her property was adjacent to Brookdale Farm, and was one property away from the subject property. She said that her house was less than a mile from the Duffs' farm, and her home was closer to the airstrip than Mr. Lear's map would have the Board believe. She said that Mr. Duff did not notify any of his neighbors that this construction was planned, which was worrisome to her. She became most concerned the day that blasting took place on this property, which was quite audible to the residents in the area; however she did not receive any damage from this blasting.

Ms. Clark said that Mr. Cox is her brother-in-law; and, like him, she has not witnessed any farming on this property. She has only seen the Duffs mow and manicure this farm. She said she does not consider the property to be an active farm at this time.

Ms. Clark stated that she had looked over the Staff Report, and commented that she did not consider a paved driveway and a garage to be comparable to a landing strip. She also did not feel a landing strip to be appropriate in an agricultural area. She also stated that she has flown into airports with fewer amenities than the dwelling and hangar that Mr. Duff has constructed.

Ms. Clark said her family would like some reassurance as to the type of aircraft that would be using this airfield in the future. Mr. Lear has said earlier that the Cessna airplane only needed 700-800' to land and take off, yet Mr. Duff has constructed a 2,000' runway here. Since her family has lived and farmed in this area for nearly two centuries, they are concerned that the hangar and the airstrip would be very near to the family's historic house. It was for tax reasons that they sold this property.

Ms. Clark was concerned with the 12 or so landings and take-offs each month at this location. They do not feel that the Urban County Government would consider this as a use that should be approved. While

the runway may be 3,000' from the road, her family owns thousands of acres in this area, and she did not feel that Mr. Duff could take off or land in a manner that did not fly over some of her family's land, livestock or homes.

Mr. Don Cowan, husband of Marian Clark, added that he was under the impression that it was easier to seek forgiveness rather than seek permission at the front end of this process. He also noted that Mr. Waits, the trustee, was never notified of this application, although this facility was within sight of that residence. He said that he was surprised that people can "do business in this way." He urged strict limitations on this use, should the wishes of his family not prevail, such as a limit of only 10 landings per month. He said that he would not even be happy with that level of activity. He did thank the Board for their time and attention.

Mr. Richard Murphy, attorney, was present representing Ms. Clark and Mr. Cowan. He thought that this was a difficult issue that had been presented to the Board. He agreed that airports are a conditional use in the A-R zone. He advised the Board that to approve a conditional use under Kentucky case law, they must find that it would not harm the public health, safety or welfare, and that it would not impair the character or the integrity of this zone or adjoining zones. He further explained the definition of a conditional use from KRS 100 as a use that was essential to, or would promote the public health, safety or welfare. He said that there was no doubt that Blue Grass Airport provided an essential service and function for this county, but it is much more questionable that this private airstrip that serves one person would also promote the public welfare in the area.

Mr. Murphy said that the Board has heard testimony that this use would impair the integrity of the area, in regard to its farming operations and to the integrity of the cattle. There have also been discussions about the integrity of the aquifer. He concluded that there are questions about the impact of the proposed use. This must be weighed against the benefit that this facility would not serve other Fayette County citizens, but only would benefit the one citizen residing on this farm.

Mr. Stout asked why this facility needs to serve more than one citizen. Mr. Murphy replied that the Board should consider whether this would be a detriment or harm to surrounding property owners, and if that would be outweighed by the benefit of this facility to surrounding property owners. For instance, airstrips are totally prohibited in the Paris Pike Overlay Zone, meaning that there must be some concern about the impact of airstrips in historic areas. The Clark family had testified that there is a historic home very near this subject property, and about their historic use of this area for farming. He continued that there was concern that this facility has been built without a permit, and he knew that this was often a concern of the Board, as well. He was pleased that this facility was approved by the FAA and the Kentucky Transportation Cabinet. However, other uses, such as establishments that serve alcoholic beverages, must obtain permission from the Alcohol Beverage Control agency, but that doesn't mean that if they also wish to have live entertainment, they don't have to also come before the Board, because they obviously do.

Mr. Murphy said that the appellant hired a consultant to assist their effort. He thought that any consultant familiar with airport construction would also know that there is local zoning control in addition to state and federal regulations. Those agencies are not in charge of local land use here in Lexington-Fayette County.

Mr. Murphy stated that although the staff had recommended approval of this use, he was concerned that their requirements may not be sufficient. He hoped that the Board would disapprove this request, but also thought that conditions for this use should also be discussed in the alternative, as there are different possibilities for this case. He asked the Board to consider substantial restrictions on this use. Because as a single-engine Cessna was said to be the type of plane using this runway, the Board should restrict the use to that type of aircraft, or smaller, as it was said that the appellant owns other planes, perhaps even a fleet of aircraft. He hoped that the Board would not approve this use for use by a fleet of aircraft, or for any business use. Any approval should have strict limits on the number of landings and take-offs per month. If it was for ten landings per month, it should be so restricted, to avoid its use by any fleet of aircraft. It should also be restricted for the private, personal use by Mr. Duff and his family. That also would limit any potential for a business use.

In summary, Mr. Murphy felt that there was potential for harm to the public health, safety and welfare by this conditional use, and he urged the Board to turn this down.

Staff Comment – Mr. Marx stated that he wished to clarify, for the record, the notices mailed to area property owners for this hearing. He said that Mr. Gary Waits, Trustee, 2294 North Cleveland Road, was mailed a letter regarding this application. Mr. Marx stated that this letter was not one of the two letters

returned to the staff out of the 64 that were mailed. However, he stated that none of the Board's notice letters are ever sent via Certified Mail.

Appellant's Rebuttal – Mr. Lear said that he had a number of specific points of rebuttal to cover with the Board. He said that the notice letter to Mr. Waits was handled the way all notice letters are. It was sent and "it did not come back." He said it was one of several disingenuous arguments raised, almost none of which go to the legal basis for this proposal, which was whether this use would have a detrimental impact to the subject property or to any adjoining properties.

Mr. Lear said that the objectors claimed that Mr. Duff's mowing of the grass and the grazing of someone else's cattle on this farm do disqualify it from being considered as an agricultural use. He countered that if close cropped grass served to "kill your agricultural use" then a lot of our finest horse farms wouldn't qualify either. He said that Mr. Duff has grown and harvested hay on this farm. Mr. Lear said that on his own local farm, the only crop produced on that farm this past year was hay. There are many local farmers that can also say that. He said that hay production does not disqualify a farm as being an agricultural use.

Mr. Lear said that, although the structure should be addressed at another time, the Duffs have built a very nice structure on this farm. He said that there was a claim that they have "terraformed" this farm. The farm has been greatly cleaned up over the past few years since the Duffs purchased it. It was not uncommon for farms to be improved in Fayette County with additional barns, roadways and grading. He said that we do not criticize people for that here; but instead, we celebrate the fact that they want to make that kind of investment locally, because it usually means that the property would be maintained, preserved and kept in an agricultural use. We have not "beat somebody up" locally for improving a farm and for keeping the grass short. Likewise, he said that our community had never determined that such a thing was not an agricultural use.

Mr. Lear stated that the distance from the runway to the nearest residential structure in the flight path of this runway was 4000' as measured by EA Partners. He opined that the claims of the objectors (about this distance) were improper.

Mr. Lear did not wish to dwell on the "character assassination" that was made; but he did say that one would have to believe that Mr. Duff notified the FAA, the State Department of Transportation, the Army Corps of Engineering, but somehow wanted to keep this a secret from the LFUCG Division of Engineering. He said that those agencies often communicate with one another. Also, an average citizen might not know that the PVA is not a part of the Urban County Government. Most people have no idea of that, especially when their office is located "one floor apart" from the Division of Building Inspection in the same building.

Mr. Lear commented about the complaint that a 2000' runway must be sinister since the aircraft only need 700' for takeoff. Mr. Lear stated that they are amenable to limiting the size of the plane that can be used as well as the number of landings and takeoffs. He stated that they told the FAA there would be 10-12 each month, and that was also what they have said today. He said that there was no practical difference between the Boone landing strip of grass and this paved landing strip.

Turning to "the only items said that related to the legal issue," Mr. Lear said that there was a fear expressed over stampeding cattle. Mr. Lear said that when he flies into Blue Grass Airport, usually in jets, he looks down at horses in the field that surround it. On takeoff, there is one of the biggest stallion complexes in the country, which was built after construction of the airport, for expensive horses. The distance of the cattle farm described at this hearing was about one mile from the runway, in his estimation. The chance of the Cessna planes impacting the nearby cattle more than the horses are impacted at Keeneland by the jet over flights is remote. He said that was the only thing the objectors have said that was related to this use. However, he said that the objectors' property was not proximate to this airstrip.

Mr. Lear said that the Duffs had spoken with many of their neighbors. He also questioned the historic house to the southwest of the Duffs property, because they gave Mr. Duff a "right of first refusal" to buy that property when he purchased his property, as he had explained it to Mr. Lear.

Mr. Lear said that the staff has recommended approval, that there is a buffer provided by the two adjacent property owners that do not object, and the rest of the complaints were "red herrings." He repeated that Mr. Duff was amenable to restrictions upon private use, takeoffs and landings, and the size of aircraft. He thought, with these types of reasonable restrictions, that in a few years Mr. Hume would also be able to report that this runway, like Mr. Boone's, "has not been a problem."

Board Questions – Ms. Moore asked about the type of farming conducted on the two farms that surround the subject property, whose owners have no objection to the airstrip. Mr. Duff replied that Mr. Norton's farm was primarily a cattle farm, while the Van Nagell farm raised both cattle and horses.

Mr. Stout asked about the aircraft, and whether Mr. Duff must report takeoffs and landings of this plane to the FAA. Mr. Duff replied in the negative; and, upon a question from Mr. Lear, added that he also does not have to file a flight plan for this type of airplane.

Mr. Griggs said that he would like the Board to understand that the pole barn is an elaborate, impressive and contemporary structure, with a 40' square hangar attached to it. There is no remnant of a pole barn that remains. He wanted the Board to know this because he was uncertain as to whether any of the Board's staff had seen this building. He said that his point was that most sophisticated pilots and businessmen would get a building permit for these types of improvements.

Mr. Griggs stated that he checked with the PVA Office, and that there was no report of this construction for this new house, which he estimated to be \$300,000-\$500,000 in value. He thought that with the report of the runway more recently, he thought that these improvements should also have been reported at the same time. He thought that building permits were required in Hazard, so it should have occurred to Mr. Duff that they are also required here as well. While he did not think that this use would enhance the farming operations nearby, he was very concerned about the repeated failures to obtain building permits. He said that the Board should deny any request arising from circumstances that are the result of willful violations of the Zoning regulations by the applicant.

Mr. Lear objected to Mr. Griggs presenting information not inside the record of this hearing. He also said that the dwelling was not currently before the Board at this time. It had not been cited by any governmental agency, and his clients had not filed any appeals concerning it. He objected to any action being taken by the Board based upon that new information.

Ms. Moore asked that if the appellant would not object to the three items mentioned by Mr. Lear, how the Board could impose a condition that would monitor takeoffs and landings, if there is no flight plan required to be filed with the FAA. Mr. Marx replied that there is probably a log kept of landings that could be made available for inspection by Building Inspection. Mr. Duff replied that he does keep a flight log. He said that if his use becomes abusive, he was confident that the neighbors would bring him back before the Board. He reminded the Board that helicopter flights were not restricted, even in this area, but that he has only wanted to fly about three times to Lexington from Hazard over the past two months. He would like to be able to fly here to see his family.

Chairman Brown asked Mr. Duff if he was a VFR pilot. Mr. Duff replied that he was approved for instrument flight, but that this facility was only approved for visual landings (not relying upon instrumentation). Chairman Brown asked if he could take off and land in the dark. Mr. Duff replied that civil twilight and civil dawn were defined as 30 minutes before sunrise and after sunset, respectively. He said that a plane, technically, could land at this airstrip after dark, but "he wasn't that type of a pilot." He said that he would only fly in during VFR conditions during the daytime. He said that there was such a thing as VFR flight at night, but this facility wasn't lighted. Chairman Brown asked Mr. Duff if he would be willing to limit the use of this facility to daylight hours, and 30 minutes before sunrise and 30 minutes after sunset. Mr. Duff replied that he was agreeable to this restriction.

Objectors' Rebuttal – Mr. Murphy clarified that the notice of this public hearing did go to Mr. Waits, but no other notice had previously been provided to him about this facility. He also wanted to enter into the record a letter received by Ms. Clark from the State Historic Preservation Office stating that her property "had been entered onto the National Register of Historic Places" back in November of last year. Chairman Brown asked if that was for the house adjacent to Mr. Duff's property. Mr. Murphy replied that this was for the larger area.

Mr. Murphy placed the submitted notification map on the overhead projector in order to clarify some of the distances. He showed the airstrip, the taxiway and the hangar on the overhead. He said that Mr. Waits' house was only about 700'-800' away from these improvements, and that Mr. Waits would have been at this hearing, had he not been ill. He felt that the noise and activity would be much closer than had been represented to the Board.

Mr. Murphy said that, as far as the family was aware, there was no "right of first refusal" involving the historic house. He stated that Mr. Norton has never lived on the adjacent property. He would ask that, if the Board does not turn this down, they do impose the restriction on lighting discussed by the Chairman.

He wanted to emphasize that the distance issue discussed was a valid one in this instance.

Mr. Cox wished to apologize to Mr. Stout and Mr. Duff for being emotional about his assertions that Mr. Duff did not give proper respect to the laws of Fayette County when he made the decisions he made.

Discussion – Ms. Moore suggested that she could favor this conditional use if five additional conditions were added to those recommended by the staff. She said that the first should limit the type of aircraft mentioned at this hearing; another imposing a limit to the number of takeoffs and landings to 12; a third to limit this for only the private use of Mr. Duff and his family; one to limit the hours to within 30 minutes of sunrise and sunset; and a final one to limit any outdoor lighting. She asked the staff if they could propose these conditions in writing. Mr. Marx said that some of the conditions previously recommended by the staff could possibly be tweaked, instead of creating new conditions.

Note: Chairman Brown declared a recess at 4:04. The Chair reconvened the meeting at 4:11 PM with all members present.

Chairman Brown asked the staff to share their work on Ms. Moore's proposed conditions. Mr. Sallee suggested an addition be made to condition #4, and also added a fifth, sixth, seventh, and an eighth condition to read as follows:

4. Use of the landing strip shall be limited to the appellant's private plane, with no use for commercial purposes. This shall be for the private, personal use of the appellant.
5. The facility shall not be used earlier than ½ hour before sunrise nor later than ½ hour after sunset.
6. The landing strip and taxiway shall not be lighted.
7. There shall be no more than 12 landings per month at this facility.
8. This landing strip shall be used only by aircraft such as a Cessna 182 or comparable single-engine aircraft.

Chairman Brown asked Mr. Lear if his client was agreeable to the additional conditions. Mr. Lear asked that proposed condition #5 should be revised to read "Landings or take-offs at the facility shall not be earlier than ½ hour..." He thought that would "be more crisp and clear." Chairman Brown agreed.

Chairman Brown did not know whether these conditions would be approved by the Board, but he asked Mr. Cox and Mr. Murphy whether they had any input on them. Mr. Cox said that they were reasonable if they must accept the fact of the airstrip being approved. He felt that the Board has accepted this request, and that because it was in place, it must remain. He said that he was disappointed in that outcome. Mr. Murphy stated that the new condition #5 should not be worded in a way to permit loud repairs on aircraft at night. Chairman Brown interpreted #5 to provide that the plane could be stored indoors from the outdoors, for instance, if a storm front approached. Mr. Cox also asked if condition #4 would permit Mr. Duff to fly in friends, say, for a party. Ms. Moore interpreted that condition #4 distinguishes between personal and business use of the airstrip. Mr. Cox agreed.

Chairman Brown if anyone else would like to address the Board about this matter. There were no other comments offered.

Discussion – Mr. Stumbo stated that one of the main concerns expressed today was regarding the appellant's actions, or lack thereof. He felt that the appellant did attempt to obtain the proper permits, and that the appellant does have a right to utilize this property in accordance with local planning and zoning laws. He said that he could support this conditional use, if all of the identified conditions would be adhered to by the appellant. He hoped that this case would be an educational experience for all gathered at this meeting.

Ms. Moore said that it was disappointing that Mr. Duff did not make this application earlier. Still, she wanted the objectors to know that the existence of the airstrip did not influence her opinion as to whether or not it should be allowed at this location. She did not believe this application was a "fait accompli."

Action – a motion was made by Mr. Stout, seconded by Mr. Stumbo to approve **AC-2010-6: RESOURCE RESTORATION, LLC** – an appeal for a conditional use permit to operate a landing strip in the Agricultural Rural (A-R) zone, on property located at 2550 North Cleveland Road, subject to the four conditions recommended by the staff (as amended) and the additional four conditions drafted at this hearing.

Discussion – Chairman Brown stated that he earlier recalled that Mr. Lear had said that, should the conditional use be granted, his client would withdraw their request for an administrative appeal. Mr.

Lear agreed with Chairman Brown.

The votes on the motion were as follows:

Ayes: Brown, Moore, Stout, Stumbo

Nays: Griggs

Abstain: Meyer

The motion for approval carried.

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wishes to present will be heard at this time.

- A. **Election of Officers** - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. The present officers are: Chair - Peter Brown; Vice-Chair - Louis Stout; Secretary - Jim Griggs.

Action – A motion was made by Mr. Stout to retain the current slate of officers. The motion was seconded by Mr. Stumbo, and carried unanimously.

- B. **Delegation of Secretarial Duties** – In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.

Chairman Brown asked Mr. Griggs if he would like to continue to delegate his duties (except for signing minutes) to Ms. Howard. Mr. Griggs replied affirmatively. The secretarial duties were delegated by acclamation.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wishes to present would be heard at this time. There were none.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be February 26, 2010.

VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 4:27 PM.

Peter Brown, Chairman

James Griggs, Secretary